



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Container Products Corporation

File: B-270360.2

Date: June 11, 1996

Joel Hughes for the protester.

James Y. Miyazawa, Esq., and Eric A. Lile, Esq., Department of the Navy, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's response to notice of sole-source award in Commerce Business Daily as technically unacceptable where notice required potential offerors to submit technical literature and data demonstrating compliance with the listed performance, safety and construction standards; protester submitted only general technical information, failing even to identify the exact equipment being offered.

DECISION

Container Products Corporation protests the rejection of its response to solicitation No. N00600-95-N-3559 POC, which was issued by the Department of the Navy for special industry machinery described as a "ultra high pressure water blast recovery and filtration system" to be used in Naval shipyards. We deny the protest.

On September 18, 1995, the Fleet and Industrial Supply Center published its intent in the Commerce Business Daily (CBD) to award a sole-source contract for the equipment under the above referenced solicitation number to United Technologies, Waterjet Systems, Inc. The CBD notice described a system that would be capable of removing underwater and above-water paint from ships located in drydock and specified required physical and performance characteristics for the equipment. The notice specified that:

"[e]quipment shall be of the manufacturer's 'current field proven design,' that is, offerors shall submit (1) data that demonstrates compliance with the performance, safety, and construction standards of the specifications; (2) structural, mechanical, and electrical design, construction and performance specifications for all major assemblies and subassemblies of the equipment; (3) description of operation,

including maintenance and trouble-shooting techniques; (4) utilities required and estimated quantity, in standard units, to support operation of the equipment."

The synopsis, referencing CBD note 22, stated that in order to be considered, interested firms must submit technical literature describing their capability to provide the required product as well as terms and conditions and a complete price quote, within 45 days of publication of the synopsis. The CBD notice stated that no formal solicitation existed, and that none would be issued unless the contracting officer determined to do so, based on responses from other interested potential sources.

Container Products submitted an 8-page response describing its product. The protester's submission asserted in its opening summary that it was offering the system as described in the solicitation, and stated that "this design, as proposed, meets in total the requirements of the solicitation," but did not otherwise identify the specific equipment being offered, either by model number or other means. The submission included no technical literature. Container Products stated in its submission that the firm's "field equipment includes the S/SSAP. . . Self-Supporting All Purpose Cleaning System and the S/SCARP. . . Self-Contained Automatic Retrieval Product," and stated that both units "are totally self-supporting recycling cleaning systems." It did not disclose, however, which (if any) of these systems was being offered, nor did it provide any information concerning either product's status as a "field-proven design."

When Container Products' technical response was evaluated, it was found technically unacceptable. The contracting officer advised the firm of this conclusion by letter, listing five specific areas in which the submission failed to provide information demonstrating compliance with the requirements of the solicitation. In summary, the omitted information concerned whether the system was a current field proven design; how (or whether) the listed components were integrated into a system; whether one of the two systems listed in the proposal was an unacceptable "abrasive media system;" how water recovery by "powerful vacuum" was to be accomplished; and what type of paint system the equipment would remove, as well as the condition of the surface following the paint removal. This protest followed.

Container Products protests that its product complies with the agency's requirements, and challenges each of the bases cited by the agency for the rejection of its proposal. The protester argues, for example, that the firm "does have 'Field

Proven Designs' that need only extension to 40,000 [pounds per square inch] to meet the solicitation requirements," and cites patent numbers that have been issued for certain processes it employs.

An offeror must affirmatively demonstrate that its product will meet the government's needs where required to do so by the agency. See Discount Mach. & Equip., Inc., B-253094, Aug. 2, 1993, 93-2 CPD ¶ 68. Where, as here, prospective contractors are required to furnish information necessary to establish compliance with the agency's requirements, an agency may reasonably find a submission that fails to include such information technically unacceptable. Id.

The protester argues that its product complies with the synopsis requirements; however, we think the rather general technical information included in the protester's submission failed to address a number of the CBD notice requirements. For example, although the synopsis required prospective offerors to demonstrate that the offered product was a current field proven design, Container Products did not even specifically identify the particular model or equipment that it was proposing to supply, much less address the question of how long (or in what capacity) it had been in service.¹ The most descriptive part of the submission was a list of the various components included in the system; however, the submission did not include any explanation, illustration, or photograph to show how the components were integrated.

In sum, Container Products' submission did not include any technical literature or data as requested by the agency to permit the agency to establish that Container Products's equipment was capable of satisfying the agency's requirements. We think the agency's conclusion that Container Products' submission did not demonstrate compliance with the stated requirements was reasonable.

Container Products also argues that if its price was low, it should have been given a further chance to demonstrate its system. We disagree. Since the agency

¹Even in its protest submission, Container Products does not identify one particular product that it is offering, and suggests that its current design would require modifications to meet the agency's requirement in any case, stating that the firm "does have 'Field Proven Designs' that need only extensions to 40,000 psi [pounds per square inch] to meet the solicitation requirements."

reasonably judged the protester's technical response to be unacceptable, its decision not to further consider Container Products' submission and to proceed with a sole-source award (to the firm which met its needs) was not objectionable.² See Elsinore Aerospace Servs., Inc., B-239672.6, Apr. 12, 1991, 91-1 CPD ¶ 368.

The protest is denied.

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²We note that Container Products does not specifically challenge the propriety of the agency's requirements as specified in the CBD synopsis or the sole-source procedures followed for this procurement.